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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,179	02/25/2005	Ralf Widera	520.1045	4000
7278	7590	11/07/2008		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER	
			LIN, WEN TAI	
			ART UNIT	PAPER NUMBER
			2454	
			MAIL DATE	DELIVERY MODE
			11/07/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/507,179

**Applicant(s)**

WIDERA ET AL.

**Examiner**

Wen-Tai Lin

**Art Unit**

2454

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-15, 18-23 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 18-23 and 29-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 13-15, 18-23 and 29-31 are presented for examination.
2. The text of those sections of Title 35, USC code not included in this action can be found in the prior Office Action.
3. Claims 13 and 29 are objected to because of an ambiguity in the amended claim languages. Specifically, at claims 13 and 29, line 9, there is a phrase “at least one of” followed by a list of items with two conjunction word “and”: one at line 10 and the other at line 13. It is unclear whether Applicant intends to have all the listed items included in the “at least one of” candidates or only the first three? For prior art rejection in this office action, the “at least one of” phrase is construed as only including the first three items because the listed choices grammatically end at the first “and”. However, Applicant is requested to clarify and/or correct the claim languages to avoid the ambiguity issue.

### ***Claim Rejections - 35 USC § 103***

4. Claims 13-15, 18-23 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura et al. [U.S. Pat. No. 6847613] in view of Goel et al. [U.S. Pat. No. 6661797].

5. Mimura was cited as one of the prior art in the previous office action.

6. As to claim 13, Mimura teaches the invention as claimed including: a method for transmitting measured information from a measuring computer [e.g., any of 33 or 34, Fig. 3] to a control computer of a measuring system [e.g., 37, Fig. 3], the measuring computer and the control computer being interconnected via a telecommunications network [Abstract; col. 8, lines 5-21], the method comprising:

transmitting a plurality of measurement packets from a sending measuring computer to the measuring computer over a measurement path so as to provide measured data including a plurality of respective one-way delay measurements of the measurement path [e.g., col. 7, lines 21-29; col. 1, lines 23-32];

combining the measured data into characteristic values having a lower volume than the measured data [e.g., statistic values; Fig.5], the characteristic values including one-way path delay [], measurement path packet loss, and a measurement path packet throughput (in terms of mean, maximum and minimum number of packets) over a time interval etc. [e.g., col. 6 line 65 – col.7 lines 29].

associating the characteristic values with a time of the combining [e.g., col.7, lines 21 - 29]; and

transmitting the characteristic values from the measuring computer to the control computer [Fig.3; col. 9, lines 9-12 and 51-56].

Mimura teaches counting the mean, maximum and minimum number of packets per unit of time as a way of understanding the variation of the network throughput associated with a designated traffic flow. Mimura does not specifically teach applying the similar statistical concept to the measurement of path delay such as a mean measurement path one-way delay, a maximum measurement path one-way delay, minimum measurement path one-way delay, a standard deviation of a measurement path one-way delay, a mean measurement path IP delay variation, a maximum measurement path IP delay variation, and a standard deviation of a measurement path IP delay variation.

However, in the same field of endeavor Goel teaches expressing various measurement of path delay and packet loss in terms of variations such as standard deviation [e.g., col.1, lines 42-50; col.11, lines 31-61].

It would have been obvious to one of ordinary skill in the art to have further expressed Mimura's path delay measurements in terms of the variance such as mean, maximum, minimum and standard deviation because these are typical characteristic of network variables and their statistical meanings are well understood.

7. As to claim 14, Mimura further teaches that the telecommunications network includes at least one of an internet and an intranet [e.g., col. 1, lines 5-16].

8. As to claim 15, Mimura further teaches that the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters, [e.g., col. 6, line 65 – col. 7, line 29].

9. As to claim 18, Mimura further teaches that the method further comprises determining a time interval for combining the measured data as a function of a measuring method [e.g., col. 12, lines 3 – 8; i.e., all the measured statistics data are obtained from a time interval marked as “interval” in 79 of Fig.7].

10. As to claim 19, Mimura further teaches that the measuring system includes a second measuring computer and wherein measurement packets are transmitted between measuring computer and the second measuring computer [e.g., 33-34, Fig. 7; i.e., since packets travels between nodes 33 and 34 of Fig.3: if node 34 is the measuring computer, then node 33 is the second computer; likewise the reverse is true].

11. As to claim 20, Mimura further teaches that the measurement packets include User Datagram Protocol measurement packets [e.g., col. 12, lines 17-24].

12. As to claim 21, Mimura further teaches that the characteristic values include a sum of all packets lost and a maximum of all successively occurring packet losses, and further comprising determining the sum of all packets lost and the maximum of all successively occurring packet losses during a detection of measurement packet losses in a time interval [e.g., 77, Fig. 7; col. 14, lines 38-56].

13. As to claims 22-23, and 29-31, since the features of these claims can also be found in claims 13-15 and 19, they are rejected for the same reasons set forth in the rejection of claims 13-15 and 19 above.

14. Applicant's arguments with respect to claims 13-15, 18-23 and 29-31 on 9/12/08 have been considered but are moot in view of the new ground(s) of rejection.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

**Examiner note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the contest of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wen-Tai Lin whose telephone number is (571)272-3969. The examiner can normally be reached on Monday-Friday (8:00-5:00) .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571)272-1915. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(571) 273-8300 for official communications; and

(571) 273-3969 for status inquires draft communication.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wen-Tai Lin

November 6, 2008

/Wen-Tai Lin/

Primary Examiner, Art Unit 2454